

The Ne Temere Decree

Strong Speech in Its Defence by a Member of the Anglican Synod of Huron, Mr. Walter Mills, K.C., Ridgetown, Ont.

The following is a verbatim report of the address delivered by Walter Mills, Esq., K.C., son of the late Hon. David Mills, Minister of Justice, at the Anglican Synod of Huron, held in the City of Stratford on the 15th of June, 1911. It is a fair interpretation of the meaning of the Ne Temere decree and deserving the favorable consideration of non-Catholics, more particularly for the reason that it comes from one who is not of the Catholic fold, a gentleman who holds a prominent place among the legal minds of the province. Mr. Mills was a delegate to the Synod from Ridgetown, Ont. The reading of this pamphlet will have for effect the correction of erroneous impressions entertained by non-Catholics in regard to the decree issued by the Pope, having reference to the Sacrament of Matrimony. A resolution as follows was proposed at the Synod by Rev. F. A. G. Wright, of Sarnia, and Mr. Mills' address was delivered in criticism of this resolution. Rev. Mr. Wright moved

"That the Synod of the Diocese of Huron, duly assembled, cordially endorses the declaration of the Archbishops and Bishops on the subject of the "Ne Temere" decree, and would hereby record its most solemn protest against the enforcement in this country of its provisions, constituting as they do, an intolerable interference with the ordinary law and a grave menace to the social life of our people."

MR. MILL'S ADDRESS

My Lord and Gentlemen.—In rising to speak upon the question which is raised by the resolution offered for the consideration of this Assembly, I do so with considerable diffidence; and because I shall make a departure from what it has been the custom at public religious assemblies to put forward as the popular cry whenever this subject has been discussed, I beg to assure you, my Lord, that whatever I may say, however I may seem to differ from the assumption which the previous speakers have gone upon, or should it seem to reflect upon what your Lordship has said in the very able and excellent deliverance which you have presented to this Synod, my respect for yourself and the high office which you hold is absolute.

The question is an important one, not only in itself, but by reason of the attention it has received and the agitation which has been fomented by clergymen in various conferences throughout the country.

It is an easy matter to stir the populace by a cry; a word with a subtle insinuation which the hatred or prejudice of a hostile faith imparts, may prove a very dangerous missile when thoughtlessly uttered to the ear of the ignorant and easily mad-dened crowd. The cry of "stop thief" used to work like magic in accumulating a crowd which joined in a hue and cry to overtake some poor unfortunate and perhaps innocent victim; a great ungovernable mass of humanity could be gathered together in the streets of old London by this cry, and like a herd of mad, unthinking, terrorized cattle, would run in a jostling, struggling endeavor to find whom they knew not, until exhaustion, confusion or a satisfied curiosity ended their murderous pursuit. The effectiveness of an anti-Catholic cry was well illustrated in the case of a man who passing through Chicago and having been taken ill, was placed in St. Joseph's Hospital in that city; when convalescent he walked leisurely down into the streets of the

business centre, and looking on in wonder and amazement at the tall mercantile houses and turning aimlessly corner after corner, he came suddenly to a stop and began to consider the way he should return; realizing that he had kept no account of his wanderings he accosted a passer-by and asked him to kindly direct him to St. Joseph's Hospital. The man replied, "I am sorry, sir, I cannot direct you there as I do not know it myself. But I can tell you how to find your way there." "Thank you, I shall be much obliged." "Well, then," said his informant "continue on the way you are now proceeding about two blocks and turn to your right, and, after you have walked three or four doors, across the street you will see Kelly's saloon. Go right over there and stand in the middle of the floor and yell with all your might, 'To hell with the pope!' and I'll guarantee you will wake up to-morrow in St. Joseph's Hospital."

There is a disposition to be moved with the more than ordinary fanaticism by an anti-religious agitation. History reveals with what terrible and cruel consequences the minds of men have been poisoned by the venom of religious bigotry; the individual unhappy, society disintegrated and the national life paralyzed. Since Christianity entered the world we have had the history of intolerance, not of paganism, but of one sect of the Christian faith against another. So much importance has been placed upon the difference between tweedle-dee and tweedle-dum in theological controversy that the earth has run red with the blood of martyrs to the religious fanaticism of clerics gone mad for an opinion.

I should like to warn you against fanatical agitation. Too often the clergy have led in this sort of thing and feared to be silent lest they should be thought to favor a wrong.

In the present instance, all the discussions and resolutions which have characterized the various religious assemblies throughout the country go to show that the position of the Roman Catholic Church is misapprehended and the Ne Temere decree misunderstood.

We hear without question any slander of the Church of Rome. We are too apt to learn the facts concerning her from her enemies and we regard her, through the misty wall of sectarianism, as a monster and an enemy. Now, this attitude is unfair; we should study her through her best men, read writings of her best authors, visit her churches and meet her priests and by close association learn that her great aim like our own is to reclaim mankind. I need not recount the popular stories of the historians which prejudice or bigotry has attributed to Roman Catholicism as some of her atrocities.

You know the story of John of Barneveldt, the Advocate and seal-keeper of Holland. During forty years of as troubled and fertile an epoch as any in human history, destined to stand out as one of the greatest statesmen of his time, after a life of service to his country as the adviser of the States-General, nearly every public document having been written by his own hand; though it was the States-General, that spoke, behind all, as Motley says "the ever teeming brain, the restless, almost omnipotent hand, the fertile pen, the eloquent and ready tongue, were seen, heard and obeyed by the great European public, by the monarchs, statesmen and warriors of the time, at many critical moments of history," yet through the ambition, antagonism and bitterness of Maurice of Nassau, ~~Nassau was~~ engaged with a plot to hand over

Protestant Holland to Catholic Spain, and after trial and sentenced to death, he was led to a platform of the public square of the Hague, and there in the presence of a great and silent multitude this grand old man, who had maintained the independence of Holland in the midst of the monarchical states of Europe, bowed down his head on the block and the executioner struck it off at a single blow. This wicked appeal to religious prejudice gave the excuse to try a noble patriot for treason and prevented a weak populace from asserting their defence for fear of the charge that they favored a hostile religious sect.

The massacre of St. Bartholomew and those which followed it, which it is customary to attribute to the Church of Rome, were the crimes of the powerful Lorraine family, who aspired to the throne of France at the approaching dissolution of the then reigning House of Valois. The Guises headed the Catholic League and fearing the growing strength and towering genius of Henry of Navarre they fired France, then five-sixths Roman Catholic, by appealing to them on the score that Navarre, whose mother, Jeanne D'Albert, had reared him a Protestant would threaten Catholicism should he ever gain the crown of France; and so bloodshed and hatred reigned in France from that time until all the House of Valois had died, and after, until Henry IV, upon the advice of Maximillian de Bethune, Duke of Sully, his Prime Minister, became a Catholic king for the peace and safety of his country. So we readily attribute to the Church those crimes which should lie at the door of ambitious princes or unscrupulous statesmen who have relied for their chances of success upon appeals to the sectarian prejudices of the people.

Now, if we are to come to the consideration of this question with preconceived prejudices we cannot do right. We should desire to be fair and to be right. Let us be right rather than popular. It is an easy thing to go with the crowd, but that is not the course for a dignified religious assembly of trained men, anxious to guide public opinion. Let us not be afraid of losing our belief in some cherished notion, but try to get at the truth whether it will destroy popular ideas as to the Church of Rome or not. It is better to know the truth than to believe something that is not so.

I have here the Encyclical Letter of Pope Pius X, published throughout the Catholic world on the occasion of the celebration of the resurrection of Our Lord at Easter, 1908. This is the document which is commonly known as the *Ne Temere* decree. *Ne Temere* means "lest rashly." It is a general review of the dangers of modern religious philosophy and a warning to the clergy to be not hasty or rash in taking up with every new doctrine that the schools of the philosophers may enunciate and defining the position of the Church on various matters of theological controversy. In this decree is contained a special declaration on the subject of the celebration of the sacrament of holy matrimony. In order that this sacrament may be validly celebrated between Roman Catholics, it is pointed out that it is necessary to go before a priest of the Church. When you understand that in that church it is treated as a holy sacrament you can also appreciate that there must be a celebration of the event according to the rites of the Church. The Church of Rome treats marriage as a union consecrated, whereby the parties undertake to accept their relation as established for life "until death do

us part," and that the union so blessed with the prayer of the priest and the declaration that "whom God hath joined together, let not man put assunder," it is a bond indissoluble. Upon every marriage certificate is printed in prominent letters that phrase. But what an idea of the sacred character of the contract this says! That other "for better or for worse," become empty nothings. Sometimes when this relation is regarded as merely a civil one, danger may lay ahead whenever difficulties arise to be impatient of the bond and the grave consequences incidental thereto. The only reason in the world for continuing the association of the clergy with the performance of the ceremony is because of its having always partaken of the sacred character of a religious ceremony. The civil law of marriage has grown out of the canon law upon this subject. Marriage in its origin is a contract of natural law. It is the parent and not the child of society. The common law of England and America considers marriage in no other light than as a civil contract or a status resulting from a contract. In Roman Catholic countries and in some of the Protestant countries of Continental Europe, it is treated as a sacrament. It is a contract sui generis and differs in some respects from all other contracts, so that the rules of law which are applicable in expounding and enforcing other contracts may not apply to it. It differs from other contracts in this, that it cannot be dissolved by mutual consent and the rights, duties and obligations which arise out of it are matters of so much importance to the well-being of the state, that they are regulated, not by the private contract of the parties, but by the public laws of the state. And as a general rule the validity of a marriage is to be decided by the law of the place where the marriage is celebrated, and if it is not valid there, it is not valid anywhere. The tendency has been growing towards a laxity in regard to marriage and divorce and modern ideas prevade clerical opinions, and we are gradually letting go, one by one, those strongholds which have always made for the stability of the home and fireside and kept the family as the training school for the young idea which maintained a respect for sacred institutions. As a church, it is not a consistent position to take that marriage is a merely civil contract. If it were so, then must follow the right to dissolve it as surely as the right exists to enter into it. Many reconciliations have taken place that owed the happiness of the family to the fact there was no easy way to set each other aside.

In the year 1563, the famous Council of Trent passed this decree for the reformation of marriage, declaring that matrimony should not be valid unless duly celebrated in facie ecclesiae and in the presence of the Parish Priest and two witnesses; this decree was known as the decree Tametsi. All decrees of the Church being in Latin, they are characterized by some prominent word in the Encyclical, forming perhaps the key to the subject; the word Tametsi was the first word of that decree and so it obtained its name from it. This decree was the law of the Church on the subject of marriage wherever the decree was promulgated. At that time the facilities for communication and travel were not so perfect as at the present day, and therefore in many remote districts the decree never was promulgated and was not therefore binding upon parties in those parishes. The decree Ne Temere was promulgated at Easter, 1908, and is now the

canon law throughout the whole Catholic world. The object of the decree Tametsi, so far as the subject of marriage was concerned, was to provide by authoritative declaration of the Church for the celebration of matrimony as a holy sacrament, and a prudent provision against the rash celebration of clandestine marriages, which the Church, for most just reasons, has always detested and forbidden by decreeing as follows:—"Those who otherwise than in the presence of the parish priest himself or another priest, acting with a license of the Ordinary, and in the presence of two or three witnesses shall attempt to contract matrimony, the Holy Synod renders them altogether incapable of contracting marriage thus, and decrees that contracts of this kind are null and void." The decree Ne Temere which unifies the law of the celebration of marriage throughout the world, has effected the following changes:—(1) The competent priest for the valid celebration of marriage, is every priest duly invested with the care of souls; (2) His presence must be willing; (3) his presence is valid for the marriage not only of persons living in his district but those from other places; (4) in case of imminent danger of death, any priest may validly assist at a marriage; (5) when it has been impossible for a whole month to have the presence of the parish priest or the ordinary of the place, the presence of a priest is not necessary for validity. For all marriages the presence of two witnesses is required.

The present decree nowhere binds those outside the Church; it binds all those within the Church; the decree Tametsi was legal and affected persons in respect to the place of their domicile or quasi-domicile. The present decree is personal; heretics and schismatics (except apostates) are not affected by it and may contract validly and legitimately amongst themselves quite independently of it. The decree itself states:

XI. (1) The above laws are binding on all persons baptized in the Catholic Church and on those who have been converted to it from heresy or schism (even when either the latter or the former have fallen away afterwards from the Church) whenever they contract sponsalia or marriage with one another.

(2) The same laws are binding also on the same Catholics as above, if they contract sponsalia or marriage with non-Catholics, baptized or unbaptized, even after a dispensation has been obtained from the impediment mixta religionis or disparitatis cultus; unless the Holy See decree otherwise for some particular place or region.

(3) Non-Catholics, whether baptized or unbaptized, who contract among themselves, are nowhere bound to observe the Catholic form of sponsalia or marriage.

Now you can readily understand from the quotations which I have just read you that this decree applies only to persons who have relation to the Roman Catholic Church. It is a disciplinary law of the Church and can have no other than the usual effects of canon law to control the behaviour and well-being of citizens of a spiritual organization as such. Nevertheless, I desire to point out to you its value as a prudent and rational provision upon this subject. The seven sacraments of the Church are and have been reckoned since the time of Peter Lombard, to be, Baptism, Confirmation, the Supper of Our Lord, Penance, Holy Orders, Matrimony and Extreme Unction. The Church of England teaches not that there are less than seven, but that there

are only two generally necessary to salvation. The Church of Rome regards them all equally important in their place.

At one time it was a provision of the Canon Law of this Church, that if any person should solemnize matrimony according to the rites of the established Church, except in certain places within proper hours or without declaration of Banns or license, or if any person falsely pretending to be in Holy Orders shall solemnize according to the rites of the Church of England, every person so offending and being convicted thereof should be adjudged guilty of felony and prosecution should commence within three years after the committing of the offence. Now no one except a Clerk in Holy Orders in the Anglican Church is competent to celebrate the sacrament of Holy Communion, no minister of the Methodist, Presbyterian, Baptist, Congregational or of any other religious persuasion would be competent to come into this Church and celebrate that sacrament nor any other sacrament recognized as such by the Church, why therefore should you cavil at the position assumed by the Church of Rome when she asserts that no one is competent to celebrate the sacrament of Holy Matrimony between persons who are baptized members of her Church except a priest who has the care of souls? The Roman Catholic Church has the right to make laws for the governance of her own people as communicants of her church and this is the only assumption which she has made. The rites and forms of marriage in the Roman Catholic Church are nearly identical with the established Church of England. She does not say that these same persons may not be married according to the Civil Law, and all the consequences that follow, such as the wife's right to dower and the children's inheritance of their father's estate, but she does say to her children, if you are true, loyal and obedient children of the Church you will comply with her laws. It may be that the Civil Law has established between you the relation of husband and wife, but such relation is purely secular and you are living in a state of sin until you have come into the Church and obtained her blessing to sanctify that relation." The real marriage occurs when the parties have come together and agreed to become man and wife; the Church merely says that by whatever form, whether by contract or due process of law they may be legally married, her children must also come into the Church and celebrate their union as a holy sacrament. In France to-day marriage is contracted in the presence of an official of the state and no clergyman of any denomination can officiate so as to create the relation of husband and wife between parties, but Catholics after obtaining their certificates of marriage go before their priests to have their union solemnized according to the Canon Law.

Now you will have noticed that I read to you a statement of the question of dispensation under the decree Tametsi. It was the practice that when a Roman Catholic desired to marry a non-Catholic, he was required to go before the priest if the non-Catholic party required that the marriage ceremony should be performed or officiated at by her own minister, and obtain from the priest a dispensation which he placed in the hands of the officiating clergyman of the non-Catholic party and he would then know that there would be no objection raised by the Roman Catholic Church to this mixed marriage.

Under the decree Ne Temere, notwithstanding that a dis-

pensation may have been obtained, the Catholic party is, under the provision which I read to you, obliged to have the relation which he has entered into sanctified by the blessing of the church.

You will see by the last paragraph which I read to you that in no way does the church presume to apply to any but those of her own church. Now as to the application of this law in relation to the Civil Law, it has no effect upon the civil contract legally consummated; in no province or state on this continent, except in the Province of Quebec, has the Canon Law any bearing upon the Civil Law in respect to the celebration of marriage; so that where the marriage for instance in the Province of Ontario is performed by a Protestant clergyman, a Justice of the Peace, or any other official, no jurist would undertake to say that the contract so performed would be affected by the provision of any Canon Law. The position of the Church is that it cares nothing about the Civil contract of marriage, that is a provision of the state with which the Church has no concern. It does not interfere with the Civil Law, but in the celebration of marriage whatever the civil requirements of the Law are, the Church always complies with the law while celebrating the marriage as a sacrament.

In the Province of Quebec, according to the Civil Code there is this provision under section 127. After enumerating in previous sections the various impediments, according to law, this section comes in as the only provision in the law of any State in this continent which shows respect for religious institutions. It reads, "Other impediments recognized according to the different religious persuasions as results from relationship or affinity or from other causes, remain subject to the rules hitherto followed in the different Churches and religious communities." It is not applicable to any individual Church. It does not single out the Church of Rome, but it says to all the religious persuasions of the Christian community that, "the law makers of this Province have assumed that you have a sincere regard for your religious affiliation and that you are not a hypocrite, but are sincere in the faith which you profess to adopt in preference to all others. It says to Methodists, Congregationalists, Presbyterians, Baptists and Anglicans and all others of the various Christian denominations; if there are any impediments which exist according to the rites of your Church the law of this Province respects them, for Christianity is recognized as part of the common law of the land. The law of this Province not only tolerates your faith, but it so far respects it as to require that its conditions shall be observed before the validity of the marriage can be asserted. The Church of Rome has a provision, according to the decree Tametsi and decree Ne Temere, which makes it imperative on all persons baptized in the Roman Catholic Church in order to celebrate a valid marriage that they should do so in the presence of the priest of their Church. This was once the law of the old Church of England. It was once the law of the Presbyterian Church in Scotland and in North of Ireland. It was once the Law of this Church, that where no difficulty existed the presence of a clergyman must be deemed indispensable and the service of a Roman Catholic Priest would not be sufficient.

In Armenia, by the Persian Law, Christian marriages are recognized if valid according to the religious denominations of

the parties, but Armenian Priests have refused to marry certain parties under conditions offensive to religion. A Roman Catholic priest performed the ceremony according to the rites of the Catholic Church, but having obtained a special license to do so on the ground that the man was a Roman Catholic and the woman a Protestant, it was held that by the law of the country where the celebration took place, that the marriage was invalid and certain forms had not been complied with, therefore there was no marriage.

To come a little nearer home I might state the case of a man who married the daughter of the English Consul at Bayrout, in Syria, at the consulate, her father and others being present at the marriage, it was celebrated by an American missionary according to the rites of the Church of England. The judges held that they were bound by the authorities and that on the facts there had been no valid marriage. That marriage took place in 1834 and that decision in 1844.

You have heard a good deal that has been said through the press about the Hebert case and a great deal of agitation has been aroused by associating the decision in that case with the Ne Temere Decree. But the Civil Code of Quebec has been the Law of Quebec and the section which I have just read to you was in that law at the time of its adoption 150 years ago. There is a case upon which the decision in the Hebert case was founded and which was reported in the Law Journals of the Province of Quebec 30 years ago. It is the case of Laramee vs. Evans. In that case it was held, that the only functionary proper to celebrate a marriage between two Roman Catholics is the proper Curé of the parties, and the marriage therefore of two Roman Catholics by a Protestant minister is null. Held, before pronouncing on the validity of a marriage between two Roman Catholics, the Superior Court should refer the case to the Bishop of the Diocese, asking him to pronounce as to the nullity of the marriage, and its dissolution, if there be cause for such; leaving to the court to adjudge thereafter as to the civil effects of the marriage.

In the Hebert case, both of the parties were Roman Catholics and they were married by the Rev. William Timberlake, a Protestant minister of Montreal. I will read you a copy of the judgment in that case. I do so on account of some of the details which it contains and that I might further explain to you the reason for the insertion of these details in the judgment.

Province of Quebec, District of Montreal. No. 273.

Superior Court, the 23rd day of March 1911.

The Honorable Mr. Justice Laurendeau,

Eugene Hebert, Plaintiff.

Marie Emma Clouatre, Defendant.

The court having heard the plaintiff by his Attorney, in the merits of the present case, having examined the proceedings, the exhibits filed and the proof and having deliberated.

Whereas the defendant, personally served, has made default to appear.

Whereas the plaintiff alleges in his declaration that the plaintiff and the defendant presented themselves on the 14th of July, 1908, before the Rev. William Timberlake, a Protestant minister of Montreal, and contracted marriage before the latter, who received their consent and gave them an authentic certificate of said marriage; that at the time of said marriage the plaintiff and the defendant were Catholics and in fact belonged to the Catholic Religion, in which they were born, and had lived publicly up to that and are still; that the defendant was baptized on the 7th of June, 1883, in the Church of Ste. Anne of Fall River, in the town of Fall River, in the State of Massachusetts, one of the United States of America; that the plaintiff was baptized under the name of Joseph Albert Eugene, child of David Hebert, farmer, and of Charlotte Willbrenner, the 28th of May, 1880, in the Church of the Parish of St. Valentine, Province of Quebec; that under the circumstances the plaintiff and the defendant could only be married in the Catholic Church, and this in the presence of their own Curé, following the formalities of the law and the rules of the Roman Catholic Church to which the parties belong; that the Rev. William Timberlake, a Protestant Minister of Montreal, had not the right to act as Curé of the said contracting parties, seeing that the former are Catholics, and the latter is a Protestant; that the said marriage contracted at Montreal, the 14th of July, 1908, has been declared null and invalid as to its bond by

decree of competent ecclesiastical authority; that the plaintiff is well founded in demanding the annulment thereof as to its civil effects; that for these reasons the said marriage is illegal and null and ought to be so declared.

Considering that the plaintiff has established the allegations of his declaration, as well by written as by verbal proof:

Doth declare the said marriage contracted by the plaintiff and defendant null and invalid as to its civil effects, which said marriage has been previously annulled by the religious authority under the jurisdiction of which they are; doth confirm to all legal effects, the said decree of the said ecclesiastical authority, pronouncing the nullity of said marriage as to its bond and doth give it full force and effect from a civil point of view without cost.

True copy, A. Moreau, Dep. P. C. S.,

(Sgd.) CHARLES LAURENDEAU, J. C. S.

The question of the soundness or unsoundness of this judgment is matter for judicial decision and not forensic debate for the mere sake of ecclesiastical pyrotechnics. According to the Civil Code, marriage must be solemnized openly, by a competent officer recognized by law. And "All priests, rectors, ministers and other officers authorized by law to keep registers of Acts of Civil Status, are competent to solemnize marriage." But none of the officers thus authorized can be compelled to solemnize a marriage to which any impediment exists according to the doctrine and belief of his religion and the discipline of the Church to which he belongs."

The courts of the provinces cannot dissolve a marriage they merely pronounce upon the validity of the contract, that is to say, whether or not a valid marriage has or has not been contracted. If not properly contracted the judgment is a declaration of annulment. If a marriage has taken place and the parties seek to dissolve the union, they have to appear before another tribunal.

The Legislatures of the respective Provinces of the Dominion provide by statute for the forms and conditions precedent to the valid entry into the marriage relation. It is in their power only, to say by whom, and in what manner parties may contract marriage; and by that same power they may fix such limitations upon the capacity of parties as may be by such Legislatures deemed expedient. And if the conditions prescribed by statute are not complied with, there may be no marriage.

In the Province of Quebec, the courts are not unanimous in their view that disregard of this provision to appear before a priest of one's own church is an impediment which may be properly embraced under the general terms of the section 127 of the Civil Code. Those judges who decline to recognize this as an impediment seem to go upon the theory that the impediment must be one existing between the parties when they present themselves for marriage before a person authorized to perform the ceremony under the law. While the judges who hold as in the case cited, take it that the parties create the impediment by wrongfully, contrary to the regulations of the religious persuasion, presenting themselves before one not authorized according to the canon law of their church. It might be said that they knew the validity could be called in question and so lightly regarded their relation as to indicate a want of serious intention by ignoring those conditions which should have had a sacred influence upon their action. The court asks of the parties setting up an impediment according to the canon law that something more than allegation be laid before it. The only functionary to say whether such impediments exist is the Bishop of the Diocese. Upon the facts and the canon law, the Bishop by decree declares there is no canonical marriage, and sets out in the decree what the canonical impediment may

be. It is then for the court to say whether the impediment so declared constitutes an impediment under the law.

In England, you will recall, and in this country, a man could not marry his deceased wife's sister, and to evade the law he might go to some foreign land where no such impediment existed and then marry her. But when he returned to his parish in England and presented his bride he was received with coldness. His rector snubbed him and his fellow parishioners looked askance and he became uncomfortable. What must he do? According to the Canon Law of the Church of England, and of the Civil Law which was the same as the Canon Law, he was living in an unlawful connubial relation. Upon the advice of his rector he would repair to the Bishop of the diocese and obtain a decree before complications arose and his standing in the church would be restored. He upon the like grounds asks the court to decree the annulment of the marriage. In vain might dissenting religious sects seek to raise a furore. The marriage is null and void according to the law of the Church of England and the law of the land as well.

Of course that law was based upon an error—a misapprehension of the Jewish law. Among the Hebrews the practice of polygamy extensively prevailed; but there was always one wife who was at the head of the household, and all the others were in a position of subordination to her. By the Hebrew Law, two sisters could not be the wives of the same husband at the same time. The policy of the law did not permit of one sister being made mistress of the other, and so it was provided that a man should not marry his wife's sister as long as his wife lived. But after her death he might marry.

The change in the law of England and of this country in this respect has been made in recent years.

You will notice that in the judgment which I have read that there is reference to the date of the baptism of each of the parties named in the parish in which they were each respectively baptized. I shall read to you the section of the Encyclical known as the *Ne Temere* decree.

9. (1) "After the celebration of a marriage, the parish priest or he who takes his place, has to write at once in the book of marriages the name of the couple and of the witnesses, the place and day of the celebration of the marriage, and the other details practised in the Ritual Book or by the Ordinary; and these even when another priest delegated by the parish priest himself or by the Ordinary has assisted at the marriage.

(2) Moreover, the parish priest has to note also in the book of baptisms that the married persons contracted marriage on such a day in his parish. If the married persons have been baptized elsewhere, the parish priest who has assisted at the marriage has to proclaim either directly or through the episcopal Curia, the announcement of the marriage that has taken place to the parish priest of the place where the person was baptized, in order that the marriage may be inscribed in the book of baptisms."

You will understand the importance of this provision in the decree and this importance is recognized by Hammick in his work on the 'Marriage Law of England,' in which he says, "The strictness of the clergy of the Roman Catholic Church in whatever concerns the law of marriage and the facilities at

their disposal for making preliminary enquiries in almost any part of the world, giving them advantages in guarding against deception, which may be usefully kept in mind by superintendent registrars in receiving notices for the marriages of Roman Catholics in other than their own churches or chapels. It is stated, however, that when persons of the Roman Catholic religion shun their Church, knowing the facilities which the clergy have for discovering the facts respecting them, and have recourse to the Registry Office or to the Established Church, not improbable some great impediment of which one or both parties are conscious—for example, they have a husband or wife living, it may be in Quebec, America, or in some distant part of the country—may exist, and their motives in so doing is to escape detection.”

Now observe the value of this provision, for a Roman Catholic has his name inscribed in the book of his baptism, usually in the Parish of their birth. It is impossible for him, when the question of his marriage is in the hands of a man of conscience to commit such frauds as were rampant in Europe before the proclamation of the Tametsi Decree, and which may be committed still in the various “Gretna Greens” throughout the world. At Windsor, for instance, a man may come from Pontiac, Saginaw, Kalamazoo, Grand Rapids or Detroit, and bring with him a young girl say sixteen years of age; if a Roman Catholic and he should repair to the residence of a Priest and produce his license, which he has obtained from an official in Windsor, and ask to be married, the Priest cannot marry him without knowing first who he is and who is this young woman appearing to be under age. The applicant in vain replies that he has the license and that he has satisfied the official issuing the license on that point—the priest must be satisfied himself. He must know who the young woman is, and who her parents are, and he must know from themselves that he has their consent to celebrate this sacrament. He must further know from the book of baptisms in the parish where the man was baptized that he has not already a wife. The priest must know these things for himself. He cannot according to the law of his Church, rashly perform a ceremony of marriage between two parties without knowing these things, consequently the provision was made in the decree, they must be married by the priest of the parish in which they reside; and now under the *Ne Temere* decree even the priest who comes from the outside must know from the priest on the inside that the parties are competent to marry. So that if a man were baptized in Italy and married in the Yukon, the priest in the Yukon must know from the priest in the parish in Italy whether an entry is made in the book of baptisms as to this man’s marriage, because if he ever was married according to the rites of his Church, the particulars of his marriage will appear in the book of his baptism in the parish in whatever part of the world he may come from.

Neither the law of the land nor that of conscience operates as a restraint upon the clergyman of any other denomination equal to this, nor offers the safe-guard to the contracting parties or their friends, in this Province of Ontario, where we find so presumptuous a spirit of reform.

In Ontario no one has ever raised the plea of this canonical

impediment as a ground for annulling a marriage contract. So that the canonical law cannot be said to be an interference with the ordinary law, and if the statute were to embrace canonical impediments it would be still less, and interference for that cannot be said to be an interference which is invited to become a part of the ordinary law. Nor can it be said to be an interference when His Majesty's Judges refer the plea of such impediment to the Bishop of the Diocese; that is for his own aid and instruction in determining whether the plea is well founded and can be held to be a legal impediment. The judge is free to decide whether the impediment is sufficient to invalidate the civil contract. The whole matter is with the court and the judge is the agent administering the law of the land, not the law of the Church. The Bishop in issuing his decree does not touch the civil contract; he merely certifies to a fact. He deals only with the sacramental character of the marriage; with the civil contract the Church has no concern, nor does she claim any. Her refusal to recognize an unconsecrated union between members of her own communion is in the same spirit as that of any other Christian denomination which refuses to recognize any other sacrament properly celebrated unless according to the rites of such religious persuasion. The priest who celebrates the sacrament of Holy Matrimony does so primarily as the agent of the Church, and is the agent of the state in so far as the valid civil contract is concerned by force of the law of the land. But, should the state require that for the valid contract of marriage the same should be entered into in the presence of a justice of the peace or other duly authorized official, the priest would still have his function as a churchman to perform. Catholic parties would go before him to render the homage due the laws of the Church. The law of the land is not of her making, and whether in harmony with her doctrines or not, will not and cannot affect her attitude towards this matter. The Church in its proper conception is a state within the state, having citizens all her own, apart from the state of this world, within the world but not of it, having conditions dependent upon a character apart from and independent of human institutions.

The principle of toleration should allow of the greatest freedom consistent with justice. No Temere decree in no way affects the liberty of the subject as a citizen of the state, and the attacks based upon it have been misdirected. If the law of the state is the same as the law of the church the people through their representatives are responsible for the law. The law is the enactment of a political institution. Under our system the Crown in Parliament enacts the laws of the state, and His Majesty's Judges are governed by law in making judgments.

Is there not much to be said in favor of the sacramental character of marriage? Do not most young people prefer the solemnity associated with the entering into so important a relation to the frivolity which sometimes characterizes the ceremony as performed in some of our Protestant churches, where the clergyman considers himself merely a civil officer to obtain the perquisites and the people who throng the pews go into the pews armed with slippers, old shoes, stockings, baby dolls, bags of rice and confetti to be amused and to heap indignity upon the blushing bride. Is it not a mortification to a delicate

mind to be the subject of so gross consideration at the hands of her friends, and to find that the supposed sacred relation which she has determined upon is treated as a nasty joke. Is it any wonder that divorce in such minds should be deemed only a matter of course?

A man desirous of being loosed from the matrimonial bond, but without the causes for which divorce may be granted in Canada, can desert his wife and family and migrate to Dakota, where, after a residence of ninety days, he can obtain a decree of divorce on the ground of his wife's desertion. It is not so in all the States, for there is not a uniformity of law upon the subject of marriage or divorce. There is not uniformity in this country either. But into whatever country you may go, whether Christian, Pagan or Infidel, within the pale of the Roman Catholic Church, there is one law for all. Are you going to lend your influence to ask the State to use the machinery of Government to break down this bulwark which ought to meet with commendation, the principles of which ought to be the law for all people? Protestants practically ask that legislation which conforms to Catholic doctrine be repealed and that their arguments be made law.

Assuming such a position, how can they consistently claim there is any "interference with the ordinary law?" How can it be said to have a law making marriage sacred and indissoluble and placing around it the most impregnable safeguards against fraud, violence and intolerable lust, there can be any "grave menace to the social life of our people."

Now, it has been the custom to refer to the Catholic Church as interfering with the marriage relation that her priests attempt to sow dissension amongst persons who have not been married according to the rites of their Church. I can assert, as well as if I were of the Church, that this is not the case, that it is the obligation imposed upon the priest to do all he can to prevent dissension and to bring about harmonious relation where any discord arises. It is not only his duty, but he would be going against his positive instructions to the contrary were he to do otherwise than to attempt to bring about a reconciliation. It may not be popular to state these things, but it is on the side of truth and we should prefer the truth rather than the popular; let us stand out and apart from the rabble, let us be great because we are right. I know the difficulty that stands in the way of most clergymen is the fear that they should seem to countenance something contrary to the generally accepted opinion if they do not say something along the lines that are customary. Lord John Russell said, "Some there are who shut their eyes to one truth lest it should impair another they deem more sacred, but one truth can no more quench another truth than one sunbeam can quench another sunbeam. Truth is one as God is one. Go forth to meet her in whatever garb; welcome her from whatever quarter she comes; till at last beyond the grave you shall hail her a blaze of glory, which mortal eye can only strain in vain to contemplate. Truth is the gem for which the wise man digs the earth, the pearl for which he dives into the ocean, the stars for which he climbs the heavens, the herald and guardian of moral and political progress. Let it not be the reproach of any one of us, that born in a land where thought and speech are free we ever lent the helping hand through

custom, folly or intolerance to extinguish one spark of that divine flame we call the Soul, or that we turned away from a righteous and peaceable endeavor to loosen the fetters which still bind it throughout the world. Let not the flowing waters of Christianity be embittered by the gall of fierce polemical discussion. Your chances for achieving good will be greatly marred by such a course.

It is this disposition to express in extreme language our hatred of any system which runs counter to our own that mars our influence and makes us pigmies in the eyes of the broad, intelligent, thinking world; it is something worth while to stand out and be great in one's time and not for the sake of gaining a temporary foremost place to yield to the sinister influence of passion and prejudice. Let us be intellectually honest and let us have moral courage and be not afraid to assert ourselves in a position which is right, rather than follow the crowd. We should not cavil at the Church of Rome that she chooses to govern her own people in her own way. We should consider whither we are drifting. The tendency of Modernism is to tear down what we formerly considered the standards of faith. In some churches we have removed the crucifix and put from view that which was considered as a sacred emblem throughout the Christian world, and to hold it in horror because it was preserved as sacred by the Church of Rome. In some quarters we deny the divinity of Christ, we question the doctrine of the atonement and dispute the Trinity and deny the virginity of the Virgin Mary; we are indifferent as to forms and ceremonies, and one by one all those things, which were at one time considered important and sacred by the Church, are gradually being swept away, and bye and bye the only monument which will be left to preserve intact the faith of our fathers will be the Church of Rome.

Our tendency through Modernism is to dissent from the straight teaching of the old schools, to adopt something of the philosophy of the Grecian school, to challenge the old tenets of Faith, and in our efforts to harmonize the doctrines of Christianity with modern thought in science and philosophy, we have reduced the Christian system to a religious metaphysics not incompatible with the theories of the agnostic; and the doctrine of the immanence of God in Man, becomes a theological symbolism. This method of treating the Christian system is very aptly stated by Mr. Fairbairn of Mansfield College, Oxford, in his *Philosophy of Christian Religion*. The story of the historical Jesus as the Saviour of Mankind is replaced by a creature of the mythical imagination; and so uncontrolled by authority, without any fixed standard of faith, we are drifting step by step into a system of empiricism and quite apart from the dogmatic foundation upon which the early church was erected. We may be right in not recognizing any constituted authority in our system. Indeed with the various divergences of opinion standards of authority are scarcely tenable. We give to a man the right of private judgment and then try him for heresy if he differs from us. In the recent trial of the case of Dr. Workman at Montreal, we have had the admission of eminent men in a Protestant Church, that no man therein speaks with authority.

We may be right in pursuing a course tending to eliminate

the deity as a real and substantial entity and to develop our system as a spiritual comprehension of a metaphysical ideal, and, adopting the school of higher criticism, abandon literal understandings of what may be thought the traditions of a mythological age, and grow into the adherence to Christianity for its utility as a moral force in the world. But let us not be intolerant of our brother in the Church of Rome because he holds to the old authority, that she is the same yesterday, to-day and forever. Let us not forget that he is our Brother, and as you know him better you will like him more.

There was once a traveller in Wales who, standing on a hill and looking over the valley, saw on the opposite hill what appeared to him to be a huge monster, but as he journeyed down the hill-side and crossed over the valley he saw it was a man, and when he reached the other side and got so close that all the mists had cleared away, he looked into the face of his brother.

Through the mists of sectarian prejudices we see the distorted apparition and we fail of accomplishment of the good we might do in the world by our separation. There is a disposition to fraternize with those of one's own sect and these prejudices are carried to the extent of exclusiveness in social and business relations. Let us own every man as our brother. We take to ourselves the right to call our Church the Holy Catholic Church. The Holy Catholic Church is that divine system which is composed of good men whether in our Church or in any other Church or in no church at all. We are only one of the organizations seeking to promote the interests of this divine spiritual system which exists in the world, enthroned in the hearts of men. Let us get nearer to each other, visit some of the Roman Catholics, make the acquaintance of her priests, go into her churches. And let me remind you that when you stand in the aisle of a Catholic Cathedral and see the grand altar and look into the vaulted arches and admire the stained glass windows, the frescoes, the paintings, the beautiful emblems, the statuary, all these things have a tendency to inspire veneration, awe and respect for the House of God. How different it is sometimes in a Protestant Church, when without the presence of a congregation or ministering priest that its bare walls and its barn-like effects, the only association you can perhaps call to your mind was some scene of the night before, where across the table at a tea you were throwing chicken bones, pickles and bread.

Again I would urge upon you to be honest and courageous in this matter. Do not allow your traditional or preconceived prejudices to have sway. It is the part of the great man to follow his conscience even against the majority. The resolution is calculated to offer a plea to fulminate against the Catholic Church and to gratify an unworthy itching for notoriety as an anti-Romanist. But it were better to forego this temporary pleasure for the nobler satisfaction of achieving good. I am reminded here of what Mr. Edward Phelps, a great American jurist, said of Daniel Webster, who was on account of his fearlessness, intellectual honesty and moral courage, destined to stand "the stateliest figure of his period, the noblest product of the history of his time. Like Mount Blanc among the Alps when you are at the foot of it, and all the little excrescences of daily life are in the way, and other large hills and mountains

rise up around it, you do not comprehend its vastness, but when the traveller journeys away to the westward, one after another, the mountains that have challenged its superiority go down behind the horizon until all have disappeared, and when on the banks of Geneva he looks back for the last time, there stands the monarch towering among the stars, magnificent undiminished and alone.

In view of the conformity of the laws of this Province in some respects to the regulations of various religious persuasions, wherein do we conceive the propriety of this discussion; in view of the continual attempts that are made from time to time by branches of religious institutions or societies invading the legislative halls, pressing to the very foot of the Throne, demanding that laws be enacted in accord with prevailing religious or sectarian opinions and prejudices, wherein is it consistent to urge the incongruity of the people of Quebec in enacting laws in the spirit of their own religious institutions?

Strife is unpleasant and unbecoming to the Church whose part it is to make for peace. Her struggle should be against a common foe. But she is divided into factions whose triumphs are won over each other and all their sufferings are endured at each other's hands. Have we not been given a religion so courteous,—“so good tempered,” says Lawrence Sterne, “that every precept of it carries a balm along with it to heal the soreness of our natures, and sweeten our spirits, that we might live with such kind intercourse in this world as to fit us to exist together in a better.”

Mr. Mills' address was followed by an excellent presentation by Mr. Matthew Wilson, K.C., of Chatham, of the relation of the Civil and Canon Law, and other speakers, among whom were Messrs. John Ransford of Clinton, E. G. Henderson, of Windsor, His Honor Judge Holt, and His Worship, J. C. Judd, of London, whose temperate spirit and moderate tone and fairness in treatment of the subject showed that Mr. Mills' effort had not been without a wholesome effect.

Indeed at the close of the Synod, His Lordship the Bishop of Huron, in referring to the work of the Synod, said: “Referring to the debate on the *No Temere* decree, I think it was one of the best ever heard in the Synod, and I am sure that in no public assembly in this country where this subject has been discussed has the Church of Rome found so able a defender. I do not say this in any spirit of depreciation. I am rather proud of it. I am only glad that our Roman Catholic friends (or brethren) may know that we entertain and encourage the spirit of toleration in our midst.”

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